

GUIDELINE FOR PRE-EMPLOYMENT INQUIRIES (APPLICATION FORMS AND JOB INTERVIEWS)*

SUBJECT	LAWFUL INQUIRIES	UNLAWFUL INQUIRIES
NAME	Whether applicant has used another name (for the purpose of checking the applicant’s past work record).	Inquiries about the name which would indicate applicant’s lineage, ancestry, national origin, descent, or marital status (i.e. maiden name). Inquiry into previous name of applicant (if not for the purpose of checking the applicant’s work record). Mr., Mrs., Miss, or Ms.
ADDRESS or DURATION OF RESIDENCE	Applicant’s address. Inquiry into place and length of current and previous address.	Specific inquiry into foreign addresses which would indicate national origin.
BIRTHPLACE, CITIZENSHIP		Whether applicant, parents, or spouse are naturalized or native-born U.S. citizens. Birthplace of applicant. Birthplace of applicant’s parents, spouse, or other relatives. Requirement that applicant submit proof of birth document prior to hiring. “Of what country are you a citizen?” Date when applicant, parents or spouse acquired U.S. citizenship. Requirement that applicant produce naturalization papers.
AGE	Inquiry whether or not the applicant meets the minimum age requirement set by law. If a minor, require proof of age in form of a work permit or a certificate of age. After being hired, require proof of age (if age is a legal requirement) or if inquiry serves legitimate record-keeping purpose.	Requirement that applicant state age or date of birth. Requirement that applicant produce proof of age in the form of a birth certificate or baptismal record. Phrases such as: “young,” “college student,” “girl,” “boy,” “recent college graduate,” “retired person,” or “supplement your pension.” Date of attendance/completion of elementary/high school/college.
RELIGION	An applicant may be advised concerning normal hours and days of work. “Apart from absences for religious observances, will you be available for work at the following times?” After a position is offered, inquiry into the need for reasonable religious accommodation.	Applicant’s religious denomination or affiliation, church, parish, pastor, or religious holidays observed.** Applicant is told: “This is a Catholic/Protestant/Jewish/atheist/etc. organization.”** “Do you attend religious services or a house of worship?”** Any inquiry to indicate or identify religious customs, or holidays observed. Applicant is told that employees are required to work on religious holidays which are observed as days of complete prayer by members of their specific faith. ** <i>unless employer is exempt under HRS 378-3(5).</i>
RACE or COLOR		Applicant’s race. Color of applicant’s skin, eyes, hair, etc., or other questions directly or indirectly indicating race or color. Applicant’s height.
PHOTOGRAPH	May be required for identification <u>after</u> hiring.	Request photograph <u>before</u> hiring.
ANCESTRY or NATIONAL ORIGIN (country of origin)	Languages applicant reads, speaks or writes fluently, if use of language other than English is relevant to the job for which applicant is applying.	Applicant’s nationality, lineage, ancestry, national origin, descent, or parentage. Nationality of applicant’s parents or spouse; maiden name of applicant’s wife or mother. Language commonly used by applicant. “What is your mother tongue?” How applicant acquired ability to read, write, or speak a foreign language.
EDUCATION	Applicant’s academic, vocational, or professional education; schools attended.	Any inquiry asking specifically the nationality, racial, or religious affiliation of a school. Dates of attendance and/or graduation from school.
EXPERIENCE	Applicant’s work experience.	
ARREST & COURT RECORD	After making a conditional job offer: Convictions (not arrests) not more that 10 years old, that are rationally related to the duties and responsibilities of the position, except that employers who are expressly permitted to consider an individual’s criminal history for employment purposes pursuant to law may do so before making a conditional job offer.	Prior to making a conditional job offer: “Have you ever been arrested or convicted?” or ask to check into person’s arrest or conviction record.*** *** <i>These inquiries are unlawful except as expressly permitted by law.</i>
NOTICE IN CASE OF EMERGENCY	Name and address of <u>person</u> to be notified in case of emergency.	Name and address of <u>relative</u> to be notified in case of emergencies.
ORGANIZATIONS, ACTIVITIES	Membership in <u>job-related</u> clubs, organizations, churches, and schools. May omit those which reveal the race, religion, age, sex, color, disability, marital status, ancestry, or sexual orientation of the applicant. What offices are held, if any.	The names of all organizations, clubs, societies, lodges to which the applicant belongs.
REFERENCES	“By whom were you referred for a position here?” Names of persons willing to provide professional and/or character references for applicant.	Require the submission of a religious reference. Questions to references which elicit information specifying applicant’s race, color, religion, ancestry, age, marital status, national origin, or sexual orientation.
SEX		Sex of the applicant. “Are you expecting?” “Are you pregnant?” “Use of birth control?” “What are your plans for having a family?” Applicant’s weight or height (unless it is a BFOQ). Mr., Mrs., Miss, or Ms.
DISABILITY	“Are you able to perform the essential functions of this job with or without a reasonable accommodation?” After the job offer is made, require a physical examination if that is a requirement for all employees.	Whether applicant has any physical or mental disability. “Have you ever collected workers’ compensation or temporary disability insurance for a previous illness or injury?” Questions regarding applicant’s general state of health or medical condition.
MARITAL STATUS		Whether single, married, divorced, widowed, separated, etc. Mr., Mrs., Miss, or Ms. Names and ages of spouse and children; provisions for child care. Spouse’s place of employment. “With whom do you reside?” “Do you live with your parents?”
SEXUAL ORIENTATION		Whether an applicant has a preference for heterosexual, homosexual, or bisexual partners/relationships.
MISCELLANEOUS	Notice to applicants that any misstatements or omission of material facts in the application may be cause for dismissal.	Require an applicant to submit a resume containing answers to unlawful inquiries.
BONA FIDE OCCUPATIONAL QUALIFICATION (BFOQ)	BFOQ Exception: Nothing shall prohibit the establishment and maintenance of a bona fide occupational qualification (BFOQ). To establish a protected basis as a BFOQ, an employer is required to show: a) that the essence of the business operation would be undermined by the hiring of a person from the protected class or b) a factual basis for believing that all or substantially all persons from the protected class would be unable to safely or efficiently perform the job duties, or it is impossible or highly impractical to deal with such persons on an individualized basis	Require an applicant to submit a resume containing answers to unlawful inquiries.
PREPARED BY THE HAWAI’I CIVIL RIGHTS COMMISSION, DECEMBER 2002 • TELEPHONE 586-8636 (TDD 586-8692)		
*This is intended as a guideline for pre-employment inquiries and does not have the force or effect of administrative rules or Hawai’i laws. If there are any inconsistencies, the rules and Hawai’i law will control.		